follows: The plaintiffs are a private limited company incorporated in Singapore in 1957. It was a family development company. Its shareholders and directors are Singapore citizens. It is a housing developer with a housing developers' licence. The "contract" was entered into with full knowledge of the contents of the Government Statement. Completion date was set for May 15, 1974. On September 27, 1973 it sought from the Registrar of Titles such Government approval stating it was their intention to develop the property. On October 15, 1973 the Registrar of Titles sent a Form B for the company to complete and inquired whether the company was interested in altering its Memorandum and Articles of Association to restrict membership and directors to only Singapore citizens and that such alteration should remain immutable. On November 4, 1973 the company returned the Form B duly completed and confirmed that it was prepared to amend the Memorandum and Articles of Association to restrict membership and directorship to Singapore citizens only. The plaintiffs were told on December 15, 1973 by the Registrar of Titles that approval was forthcoming if satisfied that plaintiffs had altered its Memorandum and Articles of Association and complied with other procedural requirements. Four months' later on March 15, 1974, the company changed its mind regarding amending its Memorandum and Articles of Association. At the trial its managing director who was appointed to that office in December 1977, years after the material dates, gave evidence that there were some foreigners interested in joining the company "and that foreigners joining our company will help our company financially." He denied, when cross-examined, any knowledge that the Registrar of Titles had suggested that the company amend its Memorandum and Articles of Association. In our opinion his evidence was entirely irrelevant on this question and therefore the company gave no reasons why it had changed its mind.

We were satisfied on the facts of this case that the plaintiffs would have had no difficulty whatsoever in amending its Memorandum, if necessary, and its Articles of Association to restrict its membership and its directorship to Singapore citizens only. No evidence was led that they took any steps at all to amend its Memorandum, if necessary, and its Articles of Association, which was a step which could be reasonably expected of them. No explanation or reasons were given why they changed their minds about altering the Memorandum and Articles of Association in such a way that approval would be granted subject to compliance with other procedural requirements. In our opinion the plaintiffs failed to do everything which could be reasonably expected of them and for these reasons we allowed the appeal and dismissed the plaintiffs' claim and as it was agreed that the only possible course on the defendants' counter-claim is to order an inquiry as to damages, we ordered that there be an inquiry as to damages on the counter-claim.

Order accordingly.

Solicitors: *P.C. Tock & Co; Foo & Quek.*

ONG HER HOCK v. PUBLIC PROSECUTOR

[C.C.A. (Wee Chong Jin C.J., Thean & Coomaraswamy JJ.) May 29, 1986]

[Singapore – Criminal Appeal No. 4 of 1985]

Evidence – Dying declaration – Whether properly admitted as evidence.

Criminal Law and Procedure – Murder – Dying declaration – Whether properly admitted as evidence.

The appellant appealed against his conviction by the High Court on a charge of murder of one Phua Ah Kau. Before he died, the deceased had spoken to his brother, Phua Chan Hooi, that he had been stabbed by "Tiong Gi Tong Eh Lang" meaning "the people from Tiong Gi Tong Triad Society." Subsequently when the police arrived, the deceased told one Corporal Subramani that two Chinese unknown to him were responsible for his injuries. Whilst in the ambulance, he told the ambulance officer that two male Chinese who were unknown to him had stabbed him. In this appeal, the appellant contended, *inter alia,* that these "dying declarations" made by the deceased were wrongly admitted as evidence. It was argued that to be admissible the exact words uttered by the deceased must be adduced in evidence by the person to whom those words were spoken.

Held, dismissing the appeal: (1) the recollection of the last words spoken by a dying man by a witness who is at the scene or arrives shortly thereafter and hears a dying declaration may properly be received in evidence. In the present case the witnesses gave evidence of their recollection of the last words spoken by the deceased and their evidence was properly admitted;

(2) the trial judges were justified on all the evidence before them in finding the appellant guilty of the offence of murder.

Case referred to:

(1) *Toh Lai Heng* v. *Regina* [1961] M.L.J. 53.

COURT OF CRIMINAL APPEAL.

Mohideen M.P. Haja Rubin for the appellant.

Fong Kwok Jen (Deputy Public Prosecutor) for the respondent.

Cur. Adv. Vult.

Wee Chong Jin C.J.: (delivering the Judgment of the Court) The appellant was convicted after a trial before Sinnathuray J. and Abdul Wahab Ghows J. of the murder of one Phua Ah Kau. We dismissed his appeal against his conviction and now give our reasons.

The deceased was in the business of distributing newspapers with a partner, Cheng Hock Peng. On April 9, 1982 Cheng left him at Block 152, Ang Mo Kio Avenue 5 at about 5.30 a.m. to await his return with newspapers for the deceased to distribute. While awaiting the return of his partner the deceased went to a coffee shop situate at Block 151 where he bought a tin of Horlicks. A few minutes later he was seen staggering along the corridor of the coffee shop with blood in his face and shirt. He requested the coffee shop assistant to call the police.

Soon after, the deceased's partner arrived at the scene and carried him to their Datsun pick-up which was parked nearby to await the arrival of an ambulance. The deceased's brother, Phua Chan Hooi, who had been called to the scene, asked the deceased whether the assault had anything to do with the newspaper business. The deceased answered in the negative. He then asked the deceased who had stabbed him and the deceased replied in the Hokien dialect that he had been stabbed by "Tiong Gi Tong Eh Lang" meaning "the people from Tiong Gi Tong Triad Society."

A little later the police arrived and a Corporal Subramani asked the deceased in Malay what had happened. He replied that two Chinese unknown to him were responsible for his injuries. Corporal Subramani asked him what weapon had been used and he said that they used a knife. He could not describe his assailants to Corporal Subramani.

The deceased was also asked by an ambulance officer who accompanied him in the ambulance which conveyed him to the Hospital what had happened. He told the ambulance officer that two male Chinese who were unknown to him had stabbed him. At about 8.30 a.m. that same day the deceased died at the Hospital from a deep stab wound which cut through his left lung and into his heart. He had another deep stab wound which entered his liver and caused a considerable amount of bleeding. In all he had ten injuries, eight of which the pathologist described as superficial in his autopsy report. Some were slash wounds, some cut wounds, some abrasions or scratches and some stab wounds. The two serious stab wounds, one of which was the fatal wound, were inflicted on the back of the deceased. The appellant, who surrendered to the police Criminal Investigation Department on September 23 1980, made three statements to the police. In all his statements he admitted inflicting the injuries with a knife during the course of an attack by the deceased who had charged at him armed with a knife. At that time he had a friend standing beside him who took no part in the incident. The appellant at the trial repeated the story he had told the police that the deceased had attacked him armed with a knife and he demonstrated to the Court how he managed to disarm and stab the deceased. The trial judges rejected his defence. They found that during his cross-examination he kept changing his stories and embellishing them and that his demonstrations were unconvincing. They found that he and an accomplice caught the deceased who was unarmed unaware and stabbed him without any provocation on his part.

Apart from the grounds of appeal usually raised that the conviction was against the weight of the evidence and that the defence was not sufficiently considered which were not seriously argued and which were in our opinion without any merit, it was contended that the "dying declarations" made by the deceased to his brother, to Corporal Subramani and to the ambulance officer had been wrongly admitted in evidence. It was argued that to be admissible the exact words uttered by the deceased must be adduced in evidence by the person to whom those words were spoken.

In our opinion, while it is settled law that "if a dying declaration is reduced to writing – and this would invariably be the case in the event of the witness in question being an investigating Police Office, Magistrate or someone of that kind – the actual words of the deceased must be recorded," the recollection of the last words spoken by a dying man by a witness who is at the scene or arrives shortly thereafter and hears a dying declaration may properly be received in evidence (see *Toh Lai Heng* v. *Regina*[1] page 54). In the pre-

sent case the witnesses gave evidence of their recollection of the last words spoken by the deceased and their evidence was, in our judgment, properly admitted.

At the conclusion of the hearing we were in no doubt that the trial judges were justified on all the evidence before them in finding the appellant guilty of the offence of murder.

For all these reasons we dismissed the appeal.

Appeal dismissed.

Solicitors: *Amarjit Rubin & Partners.*

DOVER TRANSPORT AND TRADING CO. & ANOR. v. SINGAPORE BUS SERVICE (1978) LTD.

[A.C.J. (Chan Sek Keong J.C.) August 8, 1986]
[Singapore – Magistrate Court Appeal No. 5 of 1986]

Tort – Negligence – Road accident – Conflict of evidence – Quality and credibility of witnesses.

Road Traffic – Negligence – Collision of lorry with SBS bus.

In this case, the second defendant, the servant of the first defendant, drove his lorry in such a way as to hit the rear view mirror of the bus driven by the plaintiff's driver. The accident happened along the 10 m.s. Woodlands Road whilst both vehicles were travelling in the same direction towards Upper Bukit Timah road. The Magistrate found the defendants negligent and gave judgment for the plaintiff. The defendants appealed.

Held, dismissing the appeal: the decision of the Magistrate was based substantially on his assessment of the quality and credibility of witnesses. In order to reverse, the court must not merely entertain doubts whether his decision was right but be convinced that it was wrong. In this case, the court was not convinced that the Magistrate was wrong.

Case referred to:

(1) *Whitehouse* v. *Jordan* [1981] 1 All E.R. 267, 276.

MAGISTRATE'S APPEAL.

Arul Anandan for the appellants.
John Ng for the respondents.

Cur. Adv. Vult.

Chan Sek Keong J.C.: This appeal is against the decision of the Magistrate who found as a fact that the 2nd defendant, the servant of the 1st defendant, drove his motor lorry No. YC 1107 H which was carrying plywood in such a way as to hit the rear view mirror of the motor bus No. SBS 3355 H which was being driven by the plaintiff's driver. The accident happened along the 10 m.s. Woodlands Road whilst both vehicles were travelling in the same direction towards Upper Bukit Timah Road. Where the accident occurred, the road had two lanes for vehicular traffic and road works were being carried out on the road divider separating the dual carriageway at that stretch where the accident occurred. The bus was travelling on the left lane with about 3 feet clearance to the kerb and its rear view mirror was sticking out by about a foot across the white line separating the two lanes. The plaintiff's driver said that 2nd defendant suddenly overtook him but in doing so the plywood on the lorry hit against the rear view of the bus. He took evasive action by swerving the bus to the left and in so doing collided into the left kerb.

PW1, the bus driver, made two reports on the same day, one to the plaintiff and the other to the police. In both reports he stated that the lorry hit or grazed the rear view mirror.

PW2, the foreman who inspected the bus at 8 a.m. on the day after the accident said in his evidence in chief that the rear view mirror was broken but that he overlooked repairing it. In cross-examination, he however admitted that he did not have the mirror replaced because it appeared to have been replaced when he came to examine the damage to the bus; it looked new to him. He explained that it was usual to replace mirrors because the bus needed to be shifted around. He also said that any mechanic or panel beater could have replaced it if he had found it inconvenient to drive the bus around without a mirror and that there was no need to requisition for a mirror from stores because most panel beaters kept one or two spares in the locker.

The Magistrate accepted the evidence of PW1 and PW2 in preference to the evidence of the defendant's driver.

In his grounds of decision, the Magistrate gave the following grounds for finding the defendant negligent:

(a) the defence rested on a bare denial which did